

1 IN THE UNITED STATES DISTRICT COURT

2 DISTRICT OF UTAH

3 CENTRAL DIVISION

4
5 CAPANA SWISS ADVISORS, A.G., a)

6 Swiss corporation, et al.,)

7 Plaintiffs,)

8 vs.) Case No. 2:23-CV-467TS

9 RYMARK, a Utah corporation,)

10 et al.,)

11 Defendants.)

12 _____)

13
14 BEFORE THE HONORABLE CECILIA M. ROMERO

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16 October 2, 2024

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18 Motion Hearing

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21 Transcript of Electronically Recorded Proceedings

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A P P E A R A N C E S

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1 October 2, 2024

2 P R O C E E D I N G S

3
4 THE COURT: Good afternoon.

5 We're here in the matter of Capana Swiss Advisors
6 versus Rymark, et al., case number 2:23-CV-467.

7 If I could ask counsel to make their notice of
8 appearance. Who is present on behalf of the plaintiffs?

9 MS. DIAMOND: Good afternoon. Sarah Diamond and
10 Erik Christiansen on behalf of the plaintiffs.

11 THE COURT: Thank you.

12 For the defendants?

13 MR. PEHRSON: Your Honor, my name is Chad Pehrson.
14 My colleague Stephen Richards is with me and we are with the
15 K.B. and A. lawfirm.

16 THE COURT: Thank you.

17 Pending before the Court are a number of motions
18 that I have spent the last few days reviewing. Normally I
19 would hear argument from you all, but the Court is actually
20 prepared to make rulings on all of those, and you'll
21 understand why I'm not hearing argument when I make those
22 rulings, but before I do that I have a point of
23 clarification.

24 In looking at my notes it appears still
25 outstanding, and the Court took under advisement ECF docket

1 number 68, the defendants' motion to quash, and it is my
2 intention to issue an oral ruling on that via Zoom, bringing
3 the parties back hopefully on Friday of this week, just so I
4 get myself a deadline to get that done. I just wanted to
5 make sure that that was still a live issue.

6 Mr. Pehrson, is that motion still alive and
7 pending from your perspective?

8 MR. PEHRSON: Yes, Your Honor.

9 THE COURT: All right. And the same question to
10 you, Ms. Diamond.

11 MS. DIAMOND: Yes, Your Honor.

12 THE COURT: All right. Thank you.

13 So what I'm inclined to do then is to have us get
14 on a Zoom call for the Court to issue an oral ruling on that
15 motion. I'm hoping to do that on Friday of this week, and
16 let me just pull up my calender, at 2:00 p.m.

17 Mr. Pehrson, does that work for you?

18 MR. PEHRSON: Yes, Your Honor.

19 THE COURT: All right. Ms. Diamond and Mr.
20 Christiansen, does that work for both of you?

21 MS. DIAMOND: Yes, Your Honor.

22 THE COURT: What I will do then is we'll have a
23 docket entry setting that motion for an oral ruling on
24 Friday at 2:00 p.m. via Zoom. The Zoom link will also be
25 issued.

1 My deputy just handed me a note and indicated that
2 it appears that we also have individuals on the phone. I
3 want to make sure that we note who that is.

4 Mr. Christiansen, are you able to answer that
5 question? I see you shaking your head yes.

6 MR. CHRISTIANSEN: I think Sarah can answer it.

7 THE COURT: Ms. Diamond?

8 MS. DIAMOND: Yes, Your Honor. We have our
9 client, Shaen Bernhardt, and I believe John Worden, another
10 attorney from Venable, is on the line. I am not sure if
11 there is one or two.

12 THE COURT: So your client Bernhardt and Worden,
13 who is an attorney.

14 Is that correct?

15 MS. DIAMOND: Correct.

16 THE COURT: All right. Mr. Pehrson, anyone on the
17 line from your perspective?

18 MR. PEHRSON: Not that I'm aware of.

19 THE COURT: Thank you.

20 I am going to issue rulings on all of the pending
21 motions except ECF-68, which I have indicated I will rule on
22 this Friday. I'm going to ask the parties to carefully
23 track to ensure that I have addressed each and every one of
24 those. If I have missed one, please indicate that to me at
25 the end. All right.

1 As I have indicated, I have read everything over
2 the last few days. When I was reading everything I thought
3 I would cancel the hearing and just issue written rulings,
4 but then I was reminded that I told you all at the June
5 hearing that when I get the quantity and contentious nature
6 of the motions that you have all filed, that I would bring
7 you down to court and have you come down to court, which is
8 what I'm doing today.

9 I will also add that this is not the first time
10 that the Court has had to remind the parties of their
11 obligations to meet and confer and that this Court will
12 start to impose sanctions. It appears that reminders need
13 to be given again. Local Rule 37-1 requires the parties to
14 make reasonable efforts to resolve a discovery dispute
15 before seeking court assistance. At a minimum, those
16 efforts must include a prompt written communication sent to
17 the opposing party identifying the discovery issues,
18 specifying why those responses and objections are
19 inadequate, and requesting a meet and confer either in
20 person or by phone, including suggested dates and times.

21 Pending before the Court for the plaintiffs is one
22 motion to seal, ECF-110, and four short form discovery
23 motions, ECF-111, 114, 116 and 121.

24 For the defendants one motion to seal, ECF-140,
25 which is unopposed, and five short form discovery motions,

1 ECF-112, 117, 128, 129 and 136. Setting aside the two
2 motions to seal, so ECF-110 and 140, in all other pending
3 motions it is clear that the parties have not complied with
4 local Rule 37-1.

5 In fact, with respect to the certifications, both
6 parties concede that they have not been able to meet and
7 confer in person or by phone. Rule 37-1 is not
8 discretionary, but is mandatory. It is shocking that these
9 motions would have been filed without reading this mandatory
10 rule. In reviewing the pending motions, it appears if the
11 parties could have set aside their animus towards one
12 another, some of these could have been resolved or narrowed
13 without involving the Court.

14 With the exception of the motions to seal, again,
15 ECF-110 and 140, each of the plaintiffs' motions, so
16 ECF-111, 114, 116 and 121, as well as each of the
17 defendants' motions, 112, 117, 128, 129 and 136 are denied
18 for failure to meet and confer.

19 In addition, as I assume some of these motions may
20 intend to come back to the Court, the Court makes further
21 additional rulings and/or provides some guidance to the
22 parties. With regard to the defendants' short form motion,
23 ECF-112, in addition to being denied for failure to meet and
24 confer, ECF-112 is also denied because an outright refusal
25 to meet and confer unless calls are recorded is unreasonable

1 and interferes with the litigation process and violates
2 counsels' obligations under the discovery rules and as
3 officers of the court. As this Court has already stated,
4 local Rule 37-1 is not discretionary but mandatory.

5 The Court also finds that the defendants have
6 provided no specific examples of alleged improper or false
7 accusations by plaintiffs' counsel. Instead, what is
8 apparent by all of these pending motions is that neither
9 side is engaging as these rules require. There appears to
10 be some animosity, and as a result neither party's counsel
11 is engaging in the professional manner this Court requires
12 and orders you to adhere to going forward.

13 This behavior stops today. This is a court of law
14 which the parties are welcome to come before where there are
15 legitimate disputes for the Court to decide after complying
16 with their meet and confer obligations. The Court will not
17 babysit the parties, nor will the Court allow one another to
18 depose each other, but, rather, orders the parties to engage
19 professionally with one another through the meet and confer
20 process.

21 I am going to order as of today that the meet and
22 confer process is to take place in person, not via Zoom or
23 over the phone, in the hope that in person meetings lowers
24 any animosity between the parties.

25 I know, Ms. Diamond, that you are not local

1 counsel and you reside outside of the State of Utah, so you
2 are permitted to attend via Zoom over the phone with Mr.
3 Christensen, but local counsel is ordered to meet and confer
4 in person to discuss any pending issues going forward.

5 We can revisit that once you all start to engage
6 like the professionals I know that you are. I will stress
7 that some of the issues before this Court could absolutely
8 have been resolved if you had met and conferred without
9 imputing any bad faith or ill will and just discuss the
10 issues and the applicable legal standards and listen to one
11 another and, where necessary, cooperate and make concessions
12 and narrow the issues.

13 I also want to make it clear going forward for any
14 discovery issues that come before me consistent with Rule
15 37, I will consider it a violation of a court order subject
16 to contempt or other sanctions if any further motions are
17 filed without meeting and conferring in person. I have
18 already reminded you at the last hearing that I would award
19 attorneys' fees and other sanctions. I tried to do that
20 here but, frankly, found that they would just cross each
21 other out, because both of the parties have failed to meet
22 and confer in good faith.

23 That is regarding ECF-112.

24 Regarding defendants' motion, ECF-117, the motion
25 to compel overlength briefs, the Court also denies that

1 motion, because the purpose of the meet and confer process
2 is to narrow the issues before bringing them to the Court.
3 The Court will not consider a request to file an overlength
4 brief where you have not met your obligation to meet and
5 confer and determine if the issues can be narrowed. For
6 this additional reason the motion is also denied.

7 With respect to ECF-128, the motion to quash
8 overbroad subpoenas, in addition to being denied for failure
9 to meet and confer, I want to provide some additional
10 guidance. First, the Court would note that in looking at
11 the subpoenas they appear to be very broad, which the
12 parties needed to discuss to determine if they could be
13 narrowed.

14 Second, the defendants indicate that perhaps with
15 respect to some of the requests they are unnecessary as they
16 may be able to produce the documents, which the parties are
17 specifically ordered to discuss, and, third, if there are
18 accusations of spoliation and refusal to produce, those need
19 to be fully addressed and supported. The Court does not
20 want to see any baseless accusations by any party going
21 forward.

22 Finally, if a motion is filed, it needs to address
23 standing of the objecting party and also the full legal
24 standard. So that is the additional guidance that the Court
25 provides with respect to ECF-128.

1 With respect to ECF-129, the motion to compel the
2 Colshorn deposition, and I hope I'm saying that name right,
3 and in addition to being denied for failure to meet and
4 confer, the Court also gives the parties some guidance. I
5 tend to not look outside of the Tenth Circuit for cases
6 unless there is a reason for me to do so. The brief cites
7 to cases outside of the Tenth Circuit with no explanation if
8 there are in fact controlling or persuasive cases with a
9 fact pattern within the Tenth Circuit or district courts
10 within the Tenth Circuit.

11 If the motion is refiled, I will need to
12 understand why the Court would follow cases outside of the
13 Tenth Circuit. I generally never look to the Ninth Circuit.
14 It is not a circuit that we tend to follow here. All right.

15 With respect to the motion to quash regarding the
16 deposition notice, ECF-136, and that is also the defendants'
17 motion, in addition to being denied for failure to meet and
18 confer, the Court also denies the motion as the defendants
19 have failed to address how they have standing to challenge
20 the deposition of William Bower, a vice president of Oak
21 Street.

22 As set forth in the Hutchinson versus Kamauu case,
23 which is a 2022 WestLaw at 180641 case from the District of
24 Utah from January 20th of 2022, a motion to quash a subpoena
25 may only be made by the party to whom it is directed. The

1 exception to this rule is where the party seeking to
2 challenge the subpoena has a personal right or privilege
3 with respect to the subject matter requested in the
4 subpoena. That comes from the same case.

5 However, even when a party has standing to quash a
6 subpoena based on privilege or a personal right, he or she
7 lacks standing to object on the basis of undue burden and on
8 the grounds of overbreadth and relevance. That comes from
9 Monroe versus FinWise Bank, a 2021 Westlaw case, 5926416, a
10 District of Utah case from December 15th of 2021. The
11 defendants have failed to address standing and any
12 exceptions and for this additional reason ECF-136 is denied.

13 With respect to defendants' motion to seal at
14 ECF-140, no opposition was filed and it is, therefore,
15 granted. I would note that this is a motion to seal and the
16 Court does not find that any discussion about the properness
17 of the designations to be appropriately addressed in the
18 motion to seal and, therefore, declines to do so. All
19 right.

20 Now, turning back to the plaintiffs' motion, the
21 plaintiffs' motion to seal, ECF-110, the Court first makes
22 it clear that to the extent that the defendants seek
23 affirmative relief in the opposition, with the argument that
24 the plaintiffs violated the protective order with a blanket
25 designation of every page of every document, the Court finds

1 the request to be improperly brought before the Court.
2 Local Rule 7-1-A-3 indicates that a party may not make a
3 motion in a response. The focus of this motion relates to
4 sealing only 11 documents, document 3, 5, 6, 16, 21, 23, 25,
5 26, 32, 34 and 37. Nothing more.

6 Moreover, the plaintiffs' motion does not address
7 the applicable standard for maintaining confidentiality
8 designations under the protective order and this Court will,
9 therefore, not address that issue. By way of providing
10 guidance, to maintain confidentiality designations a party
11 must file a motion for a protective order addressing the
12 specific documents for which the party is seeking to
13 maintain its designation and its reasons for doing so.

14 Where a party seeks a protective order to maintain
15 confidentiality designations of trade secrets or other
16 confidential commercial information, the Court must weigh
17 the risk of disclosure to competitors against the risk that
18 a protective order will impair prosecution or defense of the
19 claims. That standard can be found in the Annie A. versus
20 United Healthcare Insurance case, 2023 WestLaw at 197301,
21 District of Utah case from January 17th of 2023.

22 The moving party must satisfy a three-factor test
23 by establishing the information sought is a trade secret or
24 other confidential research, development or commercial
25 information and its disclosure might be harmful and the harm

1 from disclosure outweighs the need for access. It is the
2 Court's expectation that any future request addressing
3 confidentiality designations be procedurally proper and
4 address the relevant standard.

5 As for the request before the Court today in
6 ECF-110, the plaintiffs' motion is styled as a motion to
7 seal and, therefore, references the standard for sealing
8 documents under local Rule 5-1, which requires a, quote,
9 showing of good cause, end quote. That comes from local
10 Rule 5-3-A-1. Under this standard and for the reasons
11 stated in the motion as to why each of the listed documents
12 was designated confidential, the Court finds the request is
13 narrowly tailored to protect only the specific information
14 deserving protection pursuant to local Rule 5-3, and the
15 Court finds good cause to maintain plaintiffs' confidential
16 business information under seal. The Court, therefore,
17 grants the motion.

18 In doing so, the Court makes it clear it has not
19 addressed the separate issue of whether the confidential
20 designation should remain as that issue was not properly
21 before the Court. If a motion for a protective order is
22 filed, it must be done so after meeting and conferring and
23 discussing the relevant legal standard between the parties
24 and then a motion may be filed.

25 With respect to the plaintiffs' motion to protect

1 confidentiality designations, ECF-111, in addition to being
2 denied for failure to meet and confer, the Court finds that
3 there is not a specific request to designate specific
4 documents but, rather, a frustration on the communications
5 over the designations. The parties are reminded to adhere
6 to the standard protective order and to follow the procedure
7 to protect any documents and file appropriate motions
8 focusing on the relevant legal standards.

9 With respect to the plaintiffs' motion regarding
10 the document dump, ECF-114, in addition to being denied for
11 failure to meet and confer, the Court adds that in the
12 opposition the defendants indicate that with respect to
13 production nine, P-R-O-D 009, that there was a
14 misunderstanding with the production vendor and the text
15 messages were not culled by search terms. The defendants at
16 the time were working on that issue and intended to replace
17 production nine with a, quote, substantially narrower, end
18 quote, production, which appears to moot the plaintiffs'
19 motion and concern.

20 The Court reiterates that had there been a meet
21 and confer as required by our rules, the parties should have
22 discussed this and perhaps the motion would not have been
23 needed to be filed. The Court also cautions that the meet
24 and confer obligation is ongoing. For example, you may have
25 to have multiple discussions to make sure what your

1 respective positions and understandings are and after a
2 reasonable time seek court intervention.

3 With respect to the plaintiffs' motion to compel
4 the third-party inspection of devices, ECF-116, in addition
5 to failing to meet and confer, the Court also finds that the
6 motion is based on speculation of spoliation with no factual
7 or legal basis. The Court also notes that the plaintiffs'
8 examples contain documents already produced by the
9 defendants, as this motion is not properly supported and for
10 this additional reason the motion is denied.

11 With respect to the motion for the protective
12 order regarding the Martin Fasser Heeg deposition, ECF-121,
13 the Court has a written ruling which it will issue today,
14 and that ruling is an order denying plaintiffs' short form
15 discovery motion for a protective order requiring that the
16 deposition of Martin Fasser Heeg proceed remotely.

17 By way of summary, the Court in that written
18 ruling addresses the relevant standard which the parties can
19 read, but the Court also adds that Mr. Heeg verified the
20 amended complaint, is a named party by way of a third-party
21 complaint, and has not demonstrated any specific detailed
22 costs to him personally that are not customary in litigation
23 and the Court, therefore, orders the Heeg deposition to
24 proceed in person. The written ruling will be issued right
25 after this hearing and available on the docket to see the

1 Court's full basis for the ruling.

2 That addresses -- with the exception of ECF-68, I
3 believe I have addressed all of the outstanding motions.

4 Ms. Diamond, from your perspective is that correct
5 and/or do you have anything to add?

6 MS. DIAMOND: That is correct.

7 The only thing I would add is on the document dump
8 short form motion, that would be docket number 114, it
9 actually was not correct that a replacement production was
10 provided. Until last night at about 11:00 p.m. defendants'
11 counsel sent us a sheet of documents that they said we
12 could -- you know, here is what you should use and then we
13 should then do the filtering ourselves. So it is not
14 actually correct as stated in their July 25th response that
15 they would be going through the documents one by one and
16 reproducing a narrative production within days. I just
17 wanted to update the Court with regard to that development.

18 With regard to docket number ECF-128, the
19 overbroad subpoenas, I wanted to update the Court that we
20 have a third-party deposition of Mr. Brelove that has been
21 scheduled for October 22nd. We had initially noticed that
22 for September 26th. On August 13th we noticed that
23 deposition date and then a few days before defendants'
24 counsel said that they were not available and requested that
25 it be taken -- postponed rather. So we did postpone that,

1 but I just wanted to update the Court so that we can kind of
2 get that onto the record that that is proceeding and that we
3 rescheduled it based on Mr. Pehrson's stated availability as
4 well as the availability of the third-party witness and his
5 counsel.

6 THE COURT: Thank you.

7 Mr. Pehrson?

8 MR. PEHRSON: I just want to comment on the
9 document issue. The issue with the initial production is
10 that it was overinclusive.

11 THE COURT: Sorry. I need to know which ECF
12 you're talking about. Are you talking about 114?

13 MR. PEHRSON: Yes, the one labeled document dump.
14 That did require longer interactions with our discovery
15 vendor than initially anticipated in our brief, but those
16 were initiated at that time and they were ongoing. It was
17 determined that all of the relevant documents and the
18 responsive documents had been produced, so they already had
19 them and we provided a list of those, and so we deemed that
20 to be sufficient. Reproducing those documents would just
21 require additional expense that was not deemed necessary.

22 THE COURT: Mr. Pehrson, in your motion, and I'm
23 looking at -- sorry. In your opposition, so ECF-112, it
24 indicates and you have filed a pleading indicating that you
25 are expeditiously combing the documents in question and

1 doing a document by document review of them. Rymark expects
2 to replace production nine with a substantially narrower
3 production of text messages within the coming days, which
4 will then moot the plaintiffs' motion.

5 The Court took that representation at face value
6 because you put it in the pleading.

7 Is that what you have done?

8 MR. PEHRSON: I believe that is substantively what
9 happened, Your Honor, yes. We listed the documents which
10 they already had, right, so --

11 THE COURT: This says that you're going to replace
12 it with a substantially narrower production of text
13 messages.

14 Has that been done?

15 MR. PEHRSON: Your Honor, you're asking me to
16 reproduce text messages that have already been produced.

17 THE COURT: I am not asking you to reproduce them.
18 I am asking you if you have done what you have represented
19 in this pleading? This pleading says that you are going to
20 replace them with a substantially narrower production.

21 Have you done that?

22 MR. PEHRSON: I believe so, Your Honor.

23 THE COURT: How have you done that?

24 MR. PEHRSON: Your Honor, yesterday we sent a
25 letter to opposing counsel identifying 1,100 Bates numbers

1 that hit on the search terms from the prior production, and
2 I consider that to be a replacement of that production.

3 If you would like me to reprint those Bates
4 numbers and send them those documents over again, I'm happy
5 to do that, but they already have that along with the list
6 that I conveyed to them, which I believed fits my
7 description there. If Your Honor disagrees with me I'm
8 happy to do it any way that you state, but I don't think
9 that there was nothing untoward in what happened there.

10 THE COURT: Ms. Diamond?

11 MS. DIAMOND: It was not a replacement production.
12 A replacement production would have been producing it in the
13 same way where it is something that we could give to our
14 document vendor to then process. We were given last night,
15 you know, 12 hours before this hearing, a list, as Mr.
16 Pehrson says, of 1,100 documents. Well, then we have to go
17 back to our document team and they have to go through and
18 filter it. It is not a replacement production and that was
19 July 25th that that statement was made. So now we're at
20 October 2nd, so it is certainly not any day. It has been a
21 lot of time and we have been paying the hosting charges on
22 these 17,000 plus documents that were in his initial prod
23 nine.

24 THE COURT: Thank you.

25 So, Mr. Pehrson, you have indicated, consistent

1 with the representation that you made in ECF-122, that you
2 would be willing to replace that production with a
3 substantially narrower production, which has not been done,
4 so I will order you to do that and I will order that to be
5 done within 15 days of today's date, where you replace that
6 production with the narrower production that complies with
7 whatever culling that you did and that you think meets your
8 obligation. Again, that is to be done within 15 days.

9 I will say, Mr. Pehrson, that this motion was
10 filed back in July, on July 18th, and your opposition was
11 filed on July 25th, and it did say that text messages would
12 be coming within the coming days, which suggests to me that
13 would have been done much sooner than today. So I want to
14 stress to the parties that I do expect when representations
15 are made in pleadings that you comply with those
16 representations. The coming days is not October 2nd. That
17 is also not timely. I know that you have a lot of back and
18 forth going on between you on what needs to be produced and
19 what is to be outstanding, but I have indicated the Court's
20 expectation that the parties engage professionally.

21 I want to stress that before you engage you should
22 look at the relevant standard that applies, because it seems
23 to me that if you focus on the relevant standard and then
24 whatever the factual situation is between the two of you,
25 and discuss that in your in person meet and confers,

1 hopefully you'll be able to focus in on the relevant issues.

2 It is clear that a lot of these motions were filed
3 in a haphazard manner because, as I have indicated, much of
4 the relevant standards are not even being addressed, which
5 is ultimately not helpful to me in trying to give you all
6 the guidance and orders that you need. So I want to stress
7 that things need to be done much more timely going forward.

8 I have already indicated that you are to have in
9 person meet and confers and we'll have you all switch back
10 and forth in terms of hosting them at your respective
11 offices so that there is no concern there. I will start
12 first with the plaintiffs hosting and then go to the
13 defendants and then go back and forth, so it is clear that
14 that should also not be a source of any contention.

15 With respect to the October 22nd deposition which
16 you indicated was already postponed, the Court will require
17 the meet and confer that I told you in the guidance that I
18 gave you on that specific motion, but also the other ones,
19 the Court also does require that meet and confer to take
20 place -- give me a second -- by October 14th of this month.

21 So that meeting, Mr. Christiansen, should be set
22 by you before then so that you can all discuss whatever the
23 other outstanding issues are and then get any motions before
24 the Court.

25 It was my hope and expectation, obviously, that I

1 could have gotten you this guidance before now, but my
2 calendar just has not facilitated that. As I told you, I
3 have a criminal docket that takes precedence and I just came
4 off the criminal rotation and so that takes up all of my
5 time.

6 Is there anything else that we need to discuss,
7 with the expectation that I do expect you all to play nice
8 in the sandbox? It is clear that that is not happening and
9 I am not sure why. I know there are clients on the line and
10 you should take that back to your clients that I also expect
11 that from them as well, because I am stressing contempt of
12 court if I get any more motions where you have not
13 legitimately met and conferred.

14 Ms. Diamond, anything else that we need to address
15 from your perspective?

16 MS. DIAMOND: No, Your Honor.

17 THE COURT: Mr. Pehrson?

18 MR. RICHARDS: Just briefly, Your Honor, if I may.
19 Is it the Court's expectation -- certainly it is your
20 aspiration is that we will resolve all of this. In the
21 event that we can't resolve a small number of things, is it
22 the Court's expectation that we continue to use the short
23 form motion process to bring these things to the Court?

24 THE COURT: Mr. Richards, I think it depends on
25 the type of issue, right? Sometimes it does require, and it

1 sounds like one of the briefs that you anticipated filing
2 had more meatier, substantive things to discuss, you know,
3 and I have found if it covers privileged issues,
4 confidentiality issues, waiver issues, that those are hard
5 to address in a short form motion just because of the
6 limitations on the number of words and pages, and so usually
7 when I get motions like that I order the full briefing, and
8 that option is obviously available to you to do that.

9 I do recognize that I pulled the most recent
10 scheduling order and you still have some time, right? You
11 still have some time, but if it is necessary to file
12 something outside of the short form, certainly we could try
13 to get it on our calendar much more quickly than you were
14 able to get all of these on our calendar. When I have the
15 criminal rotation, there is just so much work there to do
16 and I have to get those resolved and they have to take
17 precedent over the civil matters.

18 MR. RICHARDS: That is helpful. Thank you, Your
19 Honor.

20 THE COURT: All right. With that we will conclude
21 the hearing.

22 Yes?

23 MS. DIAMOND: I'm sorry, Your Honor.

24 I just wanted to clarify, because on our docket
25 number 116, the motion to compel the third-party inspection

1 of the defendants' devices, that would also be one that I
2 think may warrant a longer form brief rather than the short
3 form. It is docket 116.

4 THE COURT: Hold on one second. Right.

5 I think probably that is one where you would have
6 to have the longer brief to make sure you're setting out the
7 legal standard and what the Court needs to look at.

8 MS. DIAMOND: Following the in person meet and
9 confer?

10 THE COURT: That is correct.

11 MS. DIAMOND: I'm sorry, but just to go back to
12 this point again about this October 22nd deposition, so it
13 is not -- with regard to overbreadth it is not a document
14 subpoena. It is a deposition, and so just to get out ahead
15 of any discussion, I assume, and not I will speak for them,
16 but I assume that the defendants' position will be that they
17 do not want the deposition to go forward, and our position
18 is that it is highly relevant and we do want it to go
19 forward, and so given that we have already moved this to
20 accommodate Mr. Pehrson's schedule, I am just trying to see
21 if there is any further guidance from the Court with regard
22 to that specific question, the scheduled deposition. Again,
23 it is not a document subpoena. It is just the deposition
24 going forward on that date.

25 THE COURT: So you're talking about the motion to

1 quash the overbroad subpoenas, ECF-128.

2 Is that correct?

3 MS. DIAMOND: I believe so. There is not a motion
4 to quash that deposition subpoena. Mr. Richards can correct
5 the Court if I am mistaken, but I believe that would fall
6 under the 128 overbroad subpoenas generally.

7 THE COURT: I did deny that, and I certainly can't
8 speak to the specific October 22nd deposition, right, you
9 have noticed that up and nobody has moved to do anything
10 with respect to that.

11 What I can say is when I looked at the subpoenas
12 in reference to ECF-128 the categories did appear to be very
13 broad, as the defendants pointed out in their opposition,
14 and perhaps duplicative of information that they were
15 willing to provide or consider providing, and it looks like
16 that wasn't discussed and, therefore, perhaps not necessary.

17 I don't know what that specific subpoena is about.
18 I do recognize that under Rule 26 the standard for discovery
19 is relevant information, which is pretty broad, and I follow
20 that rule to the letter of the law, right? I think one of
21 you cited one of the cases that I had where I found that it
22 was not relevant, and I would say that that was an
23 employment dispute, and I remember that case because that
24 case also resulted in a sanctions award against the
25 attorney. That was a case where it was an employment

1 dispute, and if I recall correctly, they were asking to
2 depose family members and the spouse of the defendant who
3 was alleged to have engaged in inappropriate conduct with
4 his subordinates. It was clear that they were doing that to
5 harass that family. So that was the basis of my ruling. I
6 didn't think that that was an appropriate mechanism for them
7 to do that. So I tell you that because I know you cited
8 that case, but that appeared to be a particularly egregious
9 set of circumstances, and Rule 26 is generally construed
10 very broadly and so that is the guidance I can give you. I
11 am not sure if that helps.

12 MS. DIAMOND: Yes.

13 On this October 22nd deposition, again, it is not
14 a P and P and there are not topics and there are not
15 documents being requested, it is just the deposition of the
16 relationship partner for an auditor between 2022 and 2023.

17 THE COURT: What I will say is that they have not
18 moved to quash it yet, so from my perspective I have nothing
19 to say otherwise that it should not be taken.

20 MS. DIAMOND: Thank you, Your Honor.

21 THE COURT: All right. Again, a reminder. I
22 recognize that this is a serious subject matter and it is
23 very important to the parties and there is nothing wrong
24 with having a different perspective and a different
25 position, but I do think it is necessary for the parties to

1 make sure, when they are talking through these issues, that
2 you're looking at the relevant legal standard that applies
3 compared to whatever the factual situation is, to discuss
4 that to determine if the issues can be narrowed or if you
5 really do have to bring a concern to the Court.

6 Again, we're here for legitimate business
7 disputes, but I do expect the parties to engage
8 professionally with one another.

9 With that we'll conclude the hearing and be in
10 recess. Thank you.

11 MS. DIAMOND: Thank you, Your Honor.

12 (Hearing concluded.)
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